

cancel or deal with the grant to Duncan; nor was the sale made or patent issued in error or mistake. Duncan applied for the largest island in Bulger lake, and it was intended to be and was in fact granted to him under the name "Duncan Island." It was the only island near the north shore that could feed the grant. It is absurd to suppose that the bit of rock—sometimes almost submerged—could have been intended to represent an island at least twenty times its size.

The Crown could not and did not assume to cancel the grant to Duncan, and had no title upon which the subsequent grant to the defendants could operate.

The plaintiff is, therefore, entitled to have it declared that the grant to the defendants is null and void, unless (1) the plaintiff, as assignee of Duncan, is not entitled to stand in the position of Duncan, or (2) unless the plaintiff is excluded by the registration of the defendants' title under the Land Titles Act.

As to the first point, Mr. Armour relied upon *Prosser v. Edmunds*, 1 Y. & C. Ex. 481. A consideration of that case shews the facts of it to be very different from the present. . . . See *Mutchmore v. Davis*, 14 Gr. at pp. 351, 352.

In the present case, it was not a bare right which was assigned to the plaintiff, but land definitely described in the patent and known as "Duncan's Island." It cannot, I think, be open to doubt that whatever right Duncan had to have the defendants' patent declared void passed to the plaintiff.

Then, as to the effect of the Land Titles Act and the registration thereunder, it operated in favour of the plaintiff's title rather than against it. . . . The plaintiff's title is registered under that Act, and a certificate in due form was granted to him prior to the defendants' patent and certificate. . . .

[Reference to secs. 13, 119, and 121 of the Land Titles Act.]

I am of opinion that secs. 119 and 121 are applicable to this case, and that the register may be rectified. . . .

[Reference to secs. 30 and 124 of the Public Lands Act, R.S.O. 1897 ch. 28.]

The action taken before the Local Master of Titles at Bracebridge on behalf of the plaintiff, and afterwards abandoned, creates no difficulty . . . as the Master clearly had no authority to deal with the question here involved. The Minister of Lands having granted his certificate that the claim of Walter Duncan to the island was considered by him and disposed of by disallowance before the issue of the patent to the defendants, the Master was thereupon bound to discontinue further con-